MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.156 OF 2006
IN
CIVIL REVISION APPLICATION NO.86 OF 2004

Sharmila Sharad Joshi ... Applicant
versus
The Cosmos Co-op. Bank Ltd.
and others ... Respondents

Mr.G.H.Keluskar for applicant.

Mr.Siddharth Karpe i/by Sarang Aradhye for respondent no.1.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

PC :

1. Heard learned counsel for the parties. The Civil Application has been filed by the respondent in the revision application. The respondent in the revision application is the original plaintiff. In the suit filed by the respondent-plaintiff, the challenge is to a Recovery Certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 granted in favour of the petitioner in the revision application. A prayer is also made in

the suit for a declaration that the property taken by the petitioner in the revision application by way of collateral security from the plaintiff's son be declared to be of the exclusive ownership of the plaintiff.

2. The prayers in this application are for injunction. The first prayer is for restraining the petitioner in the revision application from attaching and/or selling the suit property and from disturbing the possession of the applicant. The second prayer is for restraining the respondents herein from giving effect to the notice issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security in Interest Act, 2002.

3. The order impugned in the revision application is passed by the Appellate Court by which the order of the Trial Court holding that the Civil Court had no jurisdiction to entertain the suit has been set aside. By the impugned order, the suit has been remanded to the Trial Court for hearing. By the interim order passed in the revision application, the proceedings of the suit filed by the applicant has been stayed.

MST

4. If the flat in question is attached by the respondents, the remedy available to the applicant in this application is under Sub Rule 19 of Rule 107 of the Maharashtra Co-oprative Societies Rules, 1961. For challenging an action initiated under the Act of 2002, a statutory remedy is available to the applicant. Hence, no case is made out for grant of relief which is prayed in this application.

5. Civil Application is accordingly rejected. To enable the applicant to take appropriate steps, for a period of four weeks from today the respondents shall not take any coercive steps against the property in question.

(A.S.OKA, J.)